

AMSA & GSA Household Goods and Freight Forum

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Presented by

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Summary of Household Goods Mover Oversight Enforcement and Reform Act of 2005

Signed into Law by President Bush on 08/10/05

Presented by Michael A. Garcia

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Three Key Changes to the Laws Governing Interstate Shipments of Household Goods

- The 110% rule (Non-binding) v. 100% rule (binding)
- Visual estimates required. “50 mile rule”
- Volume/Cubic Feet v. Weight based shipments

The 110% Rule (Non-binding) v. 100% Rule (Binding)

- Generally, a carrier must relinquish possession of the household goods upon payment of 100% of charges contained in a binding estimate or 110% of charges contained in a non-binding estimate.
- Exceptions: (as defined by the applicable tariff)
 - Post Contract Services
 - Impracticable Operations

Visual Estimates Required “50 Mile Rule”

- Under the new law any shipper whose property is located within 50 miles of the estimator's location must receive a physical survey/visual estimate of the property.
 - Physical survey of the goods by carrier's “agent”
 - Required for goods located within a 50 mile radius of “agents” location
 - Exception: Written waiver

Volume/Cubic Feet v. Weight Based Shipments

| Basis for charges | Binding | Non-Binding |
|-------------------|---------|-------------|
| Weight | Yes | Yes |
| Cubic feet | Yes | No |
| Other volume | Yes | No |
| Time | Yes | No |

- Cubic feet charges are not allowed under non-binding estimates.
 - A carrier may not charge a shipper for services based upon cubic feet or other volume based measurement when a “non-binding” estimate is given. All “non-binding” estimates must only be based upon the actual weight of the property.

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Questions?

Highway Piracy: Hand to Hand Combat with Rogue Movers

Presented by Gregg S. Garfinkel

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The Problem

- A reported 10,000 cases of household goods mover fraud occur every year in the United States
- “Fraud” ranges in magnitude from minor violations (e.g., overcharge for moving materials) to “hostage goods” situations

Hostage Goods Situation

- Occurs when a mover offers a low-ball estimate to obtain a consumer's business and then refuses to deliver the consumer's goods until a substantially higher payment is made
- Amount demanded is sometimes 120 % of the not-to-exceed to as much as three times the amount of the original binding estimate
- This unlawful tactic has been the subject of recent investigations by law enforcement and the news media

The Secondary Problem

- Competition from rogue movers hurts business
- Acts of rogue movers are impacting the reputation of legitimate movers
- Rogue mover's conduct is the subject matter of increasing state and local legislation, which impacts the bottom line of legitimate carriers

A Solution?

- Demonstrate that industry is capable of self-policing itself
- MoveRescue is one such attempt
- Endorsed by United Van Lines LLC and Mayflower Transit LLC, which facilitates program through the pro-bono assistance of its regional counsel
- Targets rogue-movers (non-AMSA movers, usually with licensing “issues”)

The Approach

- Meet and confer with owner of mover involved
- File suit if violation found and informal resolution impossible
- Move for Writ of Possession
- Move for Monetary Damages once goods are delivered/obtained

The Results!

- Since its launch in 2004, MoveRescue has reviewed more than 40 cases of mover fraud in California and more than 420 cases across the country
- In California, our office has rescued 35 shipments and obtained judgments against offending rogue movers in excess of \$650,000

Questions?

Household Goods Carrier 2005 Case Law Update

Presented by Gordon D. McAuley

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*Sofia Schwartz v. National Van
Lines, 375 F. Supp.2d 690
(N.D. Ill. 2004)*

- Moving company moves for summary judgment on shipper's state law claims for intentional and negligent infliction of emotional distress. Court denies motion and allows plaintiff to seek emotional distress injuries arising out of a very bad move by carrier's unlicensed subhauler.

Edward Campbell v. Allied Van Lines, 410 F.3d 618 (9th Cir. 2005)

- Plaintiff did not request available arbitration of loss and damage claims, but filed claim in court. Prevailing plaintiff was awarded attorney fees under federal rules granting fees if carrier does not have available arbitration program.

Catherine Coughlin v. United Van Lines, 362 F.Supp.2d 1170 (C.D. Cal. 2005)

- Household goods damage suit removed to federal court from state court. Shipper's motion to remand to state court denied because federal court has jurisdiction under Carmack Amendment which completely preempts plaintiff's claims.

Lara Louder v. Bekins Van Lines,
2005 U.S. Dist. Lexis 31825
(E. D. Missouri)

- Household goods damage suit removed to federal court from state court. Shipper's motion to remand to state court granted because available defense of Carmack Amendment does not completely preempt plaintiff's claims.

Karen Roberts v. North American Van Lines, 2004 U.S. Dist. Lexis 7787 (N.D. Cal. 2004)

- Household goods shipper alleges moving company gives low ball estimate then holds goods hostage until higher price paid at destination. Court holds that Carmack Amendment does not preempt state law claims because payment for service is not related to loss or damage of goods.

*Mark Hellinski v. United Van
Lines*, 2004 U.S. Dist. Lexis 16999
(N.D. Cal. 2004)

- Household goods shipper alleges moving company failed to fulfill its agreements under bill of lading. Court holds that plaintiff's state law damage claims are preempted by Carmack Amendment.

Questions?